IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: KWARIKO. J.A., MAIGE., J.A And MWAMPASHI., J.A.)

CIVIL APPLICATION NO. 618/01 OF 2021

ABDIEL REGINALD MENGI .....1ST APPLICANT

BENJAMIN ABRAHAM MENGI.....2ND APPLICANT

VERSUS

JACQUELINE NTUYABALIWE MENGI .....1ST RESPONDENT

JACQUELINE NTUYABALIWE MENGI

(As a Next Friend of JADEN KIHOZA MENGI- A Minor).....2ND RESPONDENT

JACQUELINE NTUYABALIWE MENGI

(As a Next Friend of RYAN SAASHISHA MENGI- A Minor).....3RD RESPONDENT

BENSON BENJAMIN MENGI.....4TH RESPONDENT

WILLIAM ONESMO MUSHI.....5TH RESPONDENT

ZOEB HASSUJI.....6TH RESPONDENT

SYLVIA NOVATUS MUSHI.....7TH RESPONDENT

(Application for Review of the Ruling of the Court of Appeal of Tanzania at Dar es Salaam)

(Mwambegele, Levira and Maige, JJ.A.)

dated the 12th day of October, 2021

in

Civil Application No. 332/01 of 2021

.....

RULING OF THE COURT

22nd February & 19th April, 2022

MWAMPASHI, J.A.:

This application by a notice of motion is basically brought under section 4 (4) of the Appellate Jurisdiction Act [Cap. 141 R.E. 2019] (the AJA) and rule 66 (1) (a), (c) and (d) of the Tanzania Court of Appeal Rules, 2009 (the Rules). It is an application for review seeking to review a

decision of this Court (Mwambegele, J.A, Levira, J.A and Maige, J.A), dated 12th October, 2021, in Civil Application No. 332/01/2021. The application is supported by the affidavits of Mr. Roman S.L. Masumbuko and Ms. Nakazael Lukio Tenga, the learned advocates for the applicants. In response, Mr. Audax Kahendaguza Vedasto, learned advocate, swore an affidavit in reply on behalf of the first, second and third respondents. There was no affidavit in reply filed by the rest of the respondents.

Before proceeding any further, we find it necessary to first give a brief background of the matter. The genesis of the matter was the demise of one Dr. Reginald Abraham Mengi (the deceased) who died testate in May, 2019. Following the deceased death, a Probate and Administration Cause No. 39 of 2019 was instituted in the High Court of Tanzania, Dar es Salaam Registry at Dar es Salaam. While the first, second and third respondents herein, were not parties to that Probate Cause, the applicants and the rest of the respondents, were engaged in a fierce war over the validity of the deceased's Will. The first, second and third respondents, however, were aggrieved by the said High Court decision and decided to challenge it by filing in this Court, Civil Application No. 332/01 of 2021 seeking for revision of the decision. The said application was however, greeted by a preliminary objection, taken by the applicants herein, on the following six grounds:

1. *That the application for Revision was misconceived and bad at law for being an alternative to appeal or appeal in disguise.*
2. *That the application for Revision was not maintainable as the applicants' right of appeal was self-terminated by the applicants. The applicants were barred to exercise any right by the provision of section 5 (2) (b) of the AJA.*
3. *That the grounds for application for Revision were misconceived and could not be entertained by the Court for being based on suppositions and beliefs.*
4. *That the prayers being sought by the applicants could not be issued by the Court, for being under the exclusive and mandatory jurisdiction of the Probate Court/High Court.*
5. *That the application was premature as the applicants had an alternative remedy in the High Court.*
6. *That the application for Revision was incompetent and incurably defective for failing to adhere to mandatory provisions of Rule 49 (1) and 65 (3) of the Rule as there were no essential and certified documents attached to the supporting affidavit and hence incompetent.*

Having heard the parties on the above preliminary objection, the Court, overruled it in its entirety. However, before the hearing of the application for revision on merit could be commenced, the applicants filed this application for review of the said decision of the Court on the following seven grounds:

1. *That the Honourable Court having subscribed to the legal position that an affidavit is a sworn evidence and whatever*

document a party intends to form part of it has to be stated in the affidavit and attached to it, contrary to that, a document will not form part of that evidence, the Court made a manifest error on the face of the record by holding that paragraph 5 of the supporting affidavit of Jacqueline Ntuyabaliwe Mengi attached the documents while there were two supporting affidavits and there is no single word attaching the documents in the supporting affidavits.

2. *That the Honourable Court made a manifest error and acted illegally by invoking a mere "slip rule" and applying the overriding objective rule contrary to the rules applicable to affidavits and procedural matters.*
3. *That having taken a note that grounds 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 21, 22, 23, 25, 26, 29, 30, 31 and 32 do not fall under exceptional circumstances warranting revision, this Honourable Court was enjoined to strike out the defective grounds of revision as the parties cannot argue illegal grounds.*
4. *That this Honourable Court failed to determine the third ground of objection based on the fact that it cannot be moved to rule on supposition and contrary to what was presented in court but wrongly relied on Rule 107 (2) of the Court of Appeal Rules which does not mandatorily require an objection to dispose the whole application. The Court cannot be called to rule on supposition.*
5. *That this Honourable Court made a manifest error on the record by holding that the issue whether or not the applicants' prayers in the notice of motion are maintainable or not is a matter which cannot be answered without digging into the merits of the*

application while the parties submitted specific laws giving the mandatory and discretionary jurisdiction to the High Court on sought prayers i.e section 49 (1) and (2) of the Probate and Administration of Estates Act and section 96 of the Civil Procedure Code.

6. *That the Honourable Court failed to determine the nature of prayers sought by the applicants in the notice of motion and made an error to rule that it can grant any other prayer deemed fit or not requested by the applicants in the revision. This Court cannot act as a court of first instance or discretionary court in an application for Revision where it has been moved by a party under Section 4 (3) of the Appellate Jurisdiction Act.*
7. *That the Honourable Court made a manifest error on record by holding that the fifth preliminary objection required evidence and failed to discuss the alternative remedy in the High Court available to the applicants contrary to the cited decision in* ***Yara Tanzania Limited vs. DB Shapriya & Co. Limited,*** *Civil Appeal No. 245 of 2018 and* ***DB Shapriya & Co. Limited vs. Leighton Offshore PTE Limited (T) Branch & Others,*** *Civil Revision No. 8 of 2016.*

At the hearing of the application, the applicants were represented by Ms. Nakazael Lukio Tenga, learned advocate, who was being assisted by Messrs. Roman S.L. Masumbuko, Hamis Mfinanga and Grayson Laizer, all learned advocates. On the other hand, the first, second and third respondents had the services of Messrs. Audax Kahendaguza Vedasto and William Mang'ena, both learned advocates, whilst the rest four

respondents were represented by Mr. Elisa Abel Msuya assisted by Ms. Regina A. Kiumba, both leaned advocates.

When the applicants were invited to argue the application, it was Mr. Masumbuko, learned advocate, who took the floor. First of all, he adopted the notice of motion, the two supporting affidavits as well as the written submissions comprised in a 25 pages document he had earlier filed, as part of his oral arguments in support of the application. Having adopted the said documents, Mr. Masumbuko briefly highlighted on some salient points raised in the applicants' written submissions.

As on the first ground, it was argued that the interpretation of paragraph 5 of the supporting affidavit of Ms. Jacqueline Ntuyabaliwe Mengi, the first respondent herein, by the Court that the word "application" therein meant "affidavit" is a clear error on face of the record. It was further submitted that it was also an error for the Court to have said that the use of the word "application" instead of "affidavit" by the first, second and third respondents, was a mere slip while there was no submission from the applicants which was to that effect. Mr. Masumbuko also argued that in so holding the Court recreated the application hence committing an apparent error on the face of the record as it was held in **Shamin Shaha v. Ibrahim Haji Seleman and Two Others**, Civil Application No. 163/17 of 2019 (unreported).

Still on the first ground, it was contended that the fact that the Court chose to act on the affidavit of Ms. Jacqueline Ntuyabaliwe Mengi while not bothering to look at the second affidavit of Mr. Audax Kahendaguza Vedasto which like the first affidavit, just mentioned about the documents without attaching them, was an error on the face of record. It was Mr. Masumbuko's further contention that the documents termed in the supporting affidavits as record of revision, were neither attached nor pleaded in the two affidavits and therefore that they did not form part of the supporting affidavits. He thus argued that the Court did not fully address the issues raised on the preliminary objection and that the Court made some manifest errors on the face of the record causing injustice to the applicants who are the administrators of the deceased estate. It was insisted that the errors occasioned injustice because the Court acted with bias by recreating the application in order to sustain the incurable and defective application which had omitted to include essential documents, consequence of which the applicants would be called to respond to a defective application for revision. To buttress this point, Mr. Masumbuko cited our decision in **Denis T. Mkasa v. Farida Hamza and Another,** Civil Application No. 46/08 of 2018 (unreported) where the Court held that omitting to include necessary documents in an application for revision is a fatal omission.

Regarding the second ground, it was argued that for a document to be relied on as evidence, it must be clearly pleaded and annexed to a supporting affidavit. As no documents were annexed to the supporting affidavits, Mr. Masumbuko argued, there was no room for the Court to assume that the documents which were not attached to the affidavits, formed part of the affidavits.

It was further submitted by Mr. Masumbuko that the finding by the Court on the "slip rule" was an error mostly because the "slip rule" does not apply to documents like affidavits which are not court documents. It was insisted that in calling the omission to attach the relevant documents to the supporting affidavits, a mere slip, the Court acted illegally.

Finally on the second ground, it was argued that it was an error by the Court to hold the notice of motion and affidavits were inseparable while the same are different and distinct documents as it was held by the Court in the case of **Ahmed Mbaraka v. Abdul Hama Mohamed Kassam and Another**, Civil Application No. 23 of 2011 (unreported). The Court was also faulted in applying the overriding objective principle on the argument that the principle cannot be applied blindly in order to circumvent established rules and principles. On this, the Court was referred to the case of **SGS Societe Generale De Surveillance SA and**

Another v. VIP Engineering and Marketing Limited and Another, Civil Appeal No. 124 of 2017 (unreported).

In respect of the third ground, it was argued by Mr. Masumbuko that after the Court had agreed with him that grounds 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 21, 22, 23, 25, 26, 29 ,30, 31, and 32 did not fall under exceptional circumstances warranting revision, it ought to have proceeded to strike out the grounds. Failure to do so, it was submitted, amounted to the Court being moved to exercise revisional jurisdiction in disguise of appellate jurisdiction. It was further contended that the error does not only render the decision a nullity but it also touches issues of the jurisdiction of the Court. It was insisted that by failing to strike out the defective grounds, the Court clothed itself with jurisdiction to entertain an appeal within the application for revision.

Submitting on the fourth ground, it was argued by Mr. Masumbuko that the Court did not determine the third point of the preliminary objection on suppositions. It was contended that though the Court agreed that grounds 5, 13, 14, 15, 16, 17, 18, 19, 20, 27, and 28 for revision were suppositions, it however wrongly relied on rule 107(2) of the Rules and refrained from striking out the said grounds. He argued that rule 107 (2) does not provide that a defective ground cannot be disposed of by striking it out. Mr. Masumbuko further submitted that not striking out the

said grounds and leaving them to be part of the grounds to be argued in Revision and also the failure to effectively determine the third ground, amount to a manifest error apparent on the face of the record. To support his arguments, Mr. Masumbuko cited the cases of **Basselios v. Athanasius** (1955) ISCR 550 and **Chandrakant Joshubhai Patel v. R** (2004) T.L.R. 218.

Regarding the fifth ground, it was submitted by Mr. Masumbuko that the issue of determining whether or not the applicants' prayers in the notice of motion were maintainable did not require digging into the merits of the application. It was contended that setting aside the High Court order which nullified the last will of the deceased could only be done by the High Court under section 49 (1) of the Probate and Administration of Estates Act [Cap. 352 R.E. 2019] (the Probate Act) and further that the issue was purely an issue of law requiring no digging into the merits of the application. He also argued that even the appointment or revocation of executors or administrators of deceased estates are matter under the exclusive jurisdiction of the High Court under sections 33 (1), (2), (3) and (4) and 49 (2) of the Probate Act which again needs no digging into the merits of the application.

As for the sixth ground, it was submitted by Mr. Masumbuko that the decision by the Court that it can grant any other prayer deemed fit or

even a prayer not requested by the applicants, was on a new issue to which the parties were not heard. It was submitted that the clause "any other order as the Court may deem fit" in section 4 (3) of the AJA does not justify a relief which was neither pleaded nor sought as it was decided by the Court. He insisted that the applicants were required to state specifically grounds for reliefs sought and that there is no such an order as "make any other order as the Court may deem fit".

Finally, on the seventh and last ground, it was submitted that the Court made a manifest error on the face of the record when it held that the fifth ground of objection required evidence and also when it failed to discuss alternative remedies available to the applicants in the High Court. This, it was argued, was contrary to our decision in the case of **Yara Tanzania Limited v. DB Shapriya and Company Limited,** Civil Appeal No. 245 of 2018 (unreported). He contended that the Court ought to have declined to exercise any of its powers because the applicants had not exhausted two other remedies available in the High Court namely application for revocation of letters of administration and nullification of the judgment under section 49 (1) and (2) of the Probate Act and correction of the judgment and decree under sections 96 and 97 of the Civil Procedure Code [Cap. 33 R.E. 2019] (the CPC). On the argument of there being alternative remedies in the High Court, reliance was placed on

our decision in **DB Shapriya & Co. Limited v. Leighton Offshore PTE Limited (T) Branch and Others,** Civil Revision No. 8 of 2016 (unreported).

For the above arguments, Mr. Masumbuko prayed for the application to be granted with costs.

The application was strongly resisted by Mr. Vedasto for the first, second and third respondents and Mr. Msuya for the rest of the respondents. Mr. Vedasto who firstly adopted his affidavit in reply, argued that all the grounds raised are not on any manifest error on the face of the record. Rule 66 (1) of the Rules, he contended, require not only that an error should be on the face of the record but also that the error should result in the miscarriage of justice the aspect which is completely lacking in the applicants' case. He argued that the application is misconceived and it is made in disguise of an appeal. It was also contended by him that the omission to attach the documents to the supporting affidavit was not fatal and as rightly held by the Court, it could not render the application for revision incompetent. To buttress his argument, Mr. Vedasto referred us to the cases of **Vodacom Tanzania Public Limited Company v. Planetel Communications Ltd**, Civil Appeal No. 43 of 2018 and **OTTU on Behalf of P. L. Assenga and 106 Others v. AMI Tanzania**

Limited, Civil Application No. 35 of 2011 (both unreported). He therefore prayed for the application to be dismissed with costs.

For his part, Mr. Msuya joined hands with Mr. Vedasto by submitting that no any of the factors provided under rule 66 (1) of the Rules warranting review has been established in the instant application. As on the first ground of the application it was argued by Mr. Msuya that, as rightly held by the Court in the impugned ruling, the documents complained of by the applicants for not being attached to the supporting affidavits, are not among the documents required to accompany or support a notice of motion under rule 65 (3) of the Rules which provides that the notice of motion shall be supported by one or more affidavits of the applicant or some other person or persons having knowledge of the facts. He insisted that an affidavit supporting a notice of motion must not be accompanied by any document attached to it.

Regarding the second ground, it was submitted by Mr. Msuya that under the circumstances of the matter at hand, the Court did not apply the "slip rule" as a legal concept but it merely used the word "slip" in its simple ordinary meaning and therefore that this did not require the parties to be heard. He insisted that there was no error apparent on the face of the record.

As on other grounds of the application, Mr. Msuya contended that they raise nothing close to amounting to an error apparent on the face of the record. For instance, it was pointed out by him that the third ground was adequately addressed by the Court and further that the grounds raised invite the Court to sit as an appellate court and not as a court in review. Mr. Msuya submitted that while grounds on appeal have a wide scope, grounds on review are limited within rule 66 (1) of the Rules. It was on the above arguments that Mr. Msuya prayed for the application to be dismissed with costs.

In his brief rejoinder submissions, Mr. Masumbuko reiterated his stand that apparent errors on the face of the record have been established and that the Court ought to have disregarded the documents which were not attached to the supporting affidavits. He also insisted that the parties needed to be heard on the "slip rule" which was raised by the Court *suo motu*.

Having dispassionately and carefully scrutinized the application and the submissions by the learned counsel, for and against the application, the issue for our determination is whether or not the application has met the conditions for grant of review in line with rule 66 (1) of the Rules. However, before we turn to the above task, we should first state, *albeit* in a nutshell, the law and principles governing review.

The power and scope of the Court to review its own decisions, is derived from section 4 (4) of the AJA where it is simply provided that the Court of Appeal shall have the power to review its own decisions and also from rule 66 (1) of the Rules, whereby not only the power for review is given to the Court but also the scope of the powers is set by providing the relevant grounds on which review is warrantable. It is provided under rule 66(1) of the Rules that:

> *"The Court may review its judgment or order, but no application for review shall be entertained except on the following grounds-*
>
> *(a) the decision was based on a manifest error on the face of the record resulting in the miscarriage of justice;*
> *(b) a party was wrongly deprived of an opportunity to be heard;*
> *(c) the court's decision is a nullity, or*
> *(d) the court had no jurisdiction to entertain the case;*
> *(e) the judgment was procured illegally, or by fraud or perjury.*

The principles which guide the Court in exercising its powers in review, were well stated by the East African Court of Justice (Appellate Division at Arusha), in the case of **Angella Amudo v. The Secretary General East African Community**, Civil Application No. 4 of 2015

(unreported) and reproduced by the Court in the case of **Golden Globe International Services and Another v. Millicom (Tanzania) N.V and Another**, Civil Application No. 195/01 of 2017 (unreported) thus:

> *"(a)The principle underlying a review is that the court would not have acted as it had, if all the circumstances had been known....*
>
> *(b)There are definite limits to the exercise of the power of review. The review jurisdiction is not by way of appeal. The purpose of review is not to provide a back door method to unsuccessful litigants to re-argue their case. Seeking the re-appraisal of the entire evidence on record for finding the error, would amount to the exercise of appellate jurisdiction which is not permissible...*
>
> *(c) The power of review is limited in scope and is normally used for correction of a mistake but not to substitute a view in law. This is because no judgment however elaborate it may be can satisfy each of the parties involved to the full extent..*
>
> *(d) A judgment of a final court is final and review of such judgment is an exception.*
>
> *(e) In review jurisdiction, mere disagreement with the view of the judgment cannot be a ground of invoking the same. As long as the point is already dealt with and answered, the parties are not*

entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction...

(f)There is a clear distinction regarding the effect of an error on the face of the record and an erroneous view of the evidence or law. An erroneous view justifies an appeal. Therefore, the power of review may not be exercised on the ground that the decision was erroneous on merit...

(g) It will not be sufficient ground for review that another judge would have taken a different view. Nor can it be a ground for review that the court proceeded on incorrect exposition of the law...

(h) A court will not sit as a court of appeal from its own decision, nor will it entertain applications for review on the ground that one of the parties in the case conceived himself to be aggrieved by the decision. It would be intolerable and most prejudicial to the public interest if cases once decided by the court could be re-opened and re-heard....

(i)The term 'mistake or error on the face of the record' by its very connotation signifies an error which is evident ***per se*** *from the record of the case and does not require detailed examination, scrutiny and elaboration either of the facts or the legal position. If an error is not self-evident and*

detection thereof requires a long debate and process of reasoning, it cannot be treated as an error on the face of the record. To put it differently, it must be such as can be seen by one who runs and reads..."

If we may add to the above guidelines, for the Court to exercise its review jurisdiction, it will not be sufficient to only establish that there is an error manifest on the face of the record, but it must be also established that the error has culminated into a miscarriage of justice.

Guided by the above guidelines and principles, to which we fully subscribe, we can now begin determining the application by testing the grounds raised, against the said guidelines and principles. Before we do so, we would however like to state at the outset that, as rightly argued by Messrs. Vedasto and Msuya, most of the grounds raised in this application, are grounds fit for appeal rather than review. The grounds are not apparent on the face of the record and they cannot be revealed without engaging into a prolonged process of reasoning resulting into more than one points of opinions. In short, some of the grounds raised exhibit nothing else but the applicants' dissatisfaction with our ruling sought to be reviewed.

In our view, the first, fifth, sixth and seventh grounds are grounds premised on matters and issues determined by the Court and therefore

beyond the scope of our powers in review. We will demonstrate this by beginning with the first ground on which it is basically complained that the Court made an error when it held that paragraph 5 of the supporting affidavit of Jacqueline Ntuyabaliwe Mengi (the first respondent) regarding the documents referred to sufficiently served the purpose. Admittedly, the Court agreed with Mr. Masumbuko on the position that an affidavit is a sworn evidence and that whatever document, a party intends to form part of it, has to be stated in the affidavit and attached to it, contrary to that, the document will not form part of the evidence. Notwithstanding the above concession on the position of the law, the Court, at pages 49 and 50 of the record of the instant application (the record), found that though in paragraph 5 of the supporting affidavit it was deponed that the documents would form part of the *application* instead of *affidavit,* the notice of motion by which the application for revision was made and the supporting affidavits were two things which were inseparable and further that whatever information included in form of the documents or attachment forming part of the affidavit, aimed at attaining the completeness of the application. In conclusion the Court held that for the interest of justice to both sides, the case was a fit case for the Court to apply the overriding objective principle and consider those documents as part of the supporting affidavit. It is obvious that the issue regarding

paragraph 5 of the supporting affidavit and the attached documents having been decided by the Court, the same cannot be raised again in review.

Regarding the fifth ground on the issue whether the prayers sought by the applicants in the notice of motion were maintainable or not, the Court determined the issue and the applicants' dissatisfaction does not constitute a ground in review. The issue was decided by the Court as it can be observed at page 42 of the record thus:

> *"In our view the issue whether or not the applicants' prayers in the notice of motion are maintainable or not is a matter which cannot be answered without digging into the merits of the application. In terms of section 4 (3) of the AJA, the Court can be moved to examine the propriety, correctness and illegality of the proceedings and decision of the High Court and make appropriate orders or revise the decision".*

The sixth ground on the complaint that the Court failed to determine the issue regarding the prayers sought in the notice of motion as complained by the applicants and also that the Court committed an error apparent on the face of record in holding that it can grant any other prayer deemed fit even where it is not requested to do so, is also misconceived because the Court did not fail to determine the issue as

complained by the applicants. As it can be observed at pages 42 and 43 of the record, the Court determined the matter by stating that:

> *"In our view the issue whether or not the applicants' prayers in the notice of motion are maintainable or not is a matter which cannot be answered without digging into the merits of the application. In terms of section 4 (3) of the AJA, the Court can be moved to examine the propriety, correctness and illegality of the proceedings and decision of the High Court and make appropriate orders or revise the decision".*

We also hold a similar view on the seventh ground which in essence faults the Court's decision in declining to determine the fifth point of the preliminary objection on the issue of alternative remedies available to the first, second and third respondents. The decision by the Court at page 44 of the record that the fifth point raised a mixed points of law and facts whose determination could not lead to the nullification of the whole application or dispose of the application, cannot be questioned in review. Whether the Court was wrong or not is a question which goes to the substantive correctness of the decision hence beyond the review jurisdiction.

On the basis of what we have amply demonstrated above, the first, fifth, sixth and seventh grounds are therefore, misconceived and cannot

be raised as grounds for review. As rightly argued by Messrs. Vedasto and Msuya, by raising such grounds the applicants are inviting the Court to re-assess and re-consider matters already determined and decided by the Court. The grounds render the application an appeal in disguise. See- **Mirumbe Elias @ Mwita v. Republic,** Criminal Application No. 04 of 2015 (unreported). So long as the matters were dealt with and decided by the Court, our hands are tightly tied and we have no authority to again reconsider and decide on them in review. The grounds might be worthy and good in appeal and not in review. **In Angella Amudo** (supra) it was insisted that:

> *"As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction".*

It is also insisted that this Court will not sit as a Court of appeal from its own decision nor will it entertain applications for review on the ground only that one of the parties in the case conceives himself to be aggrieved by the decision. See- **Blueline Enterprises Limited v. East African Development Bank**, Civil Application No. 21 of 2012 (unreported).

To further fortify our conclusion on the first, fifth, sixth and seventh grounds we find it deserving to repeat what we stated in **Maulid Fakihi**

Mohamed @ Mashauri v. Republic, Criminal Application No. 120/07 of 2018 (unreported) that:

> *"A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent errors. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out"*

Turning to the second ground on the complaint relating to the purported invocation by the Court of the "slip rule" and the application of the overriding objective principle, we find it apposite, for the sake of appreciating the root cause of this ground on the application of the said "slip rule", to let the relevant part of the Court ruling speak of itself as appearing at page 49 of the record thus:

> *"Therefore, in terms of the provision, an application for revision is made by notice of motion supported by an affidavit. This means that those two things are inseparable and thus whatever*

information included in form of document or attachment forming part of the affidavit, aims at attaining the completeness of the application. Therefore, although we are not saying with certainty that it was proper for the applicants to say the documents are attached to form part of the application instead of an affidavit, we equally do not think that ***such a mere slip*** *is fatal".*

[Emphasis added].

As it can be observed from the above excerpt and as it was rightly argued by Mr. Msuya, the Court used the word "slip" in its ordinary meaning. The word was not used in its legal sense or as legal concept as envisaged under rule 42 of the Rules. In holding that the mere slip was not fatal, the Court was referring to the application and the two supporting affidavits. Reference was not made to any judgment or order of the Court to which the slip rule under rule 42 of the Rules apply. In the instant case the Court did not invoke the "slip rule" in its legal sense as complained by the applicant and the ground is therefore completely misconceived. For the same reasons, the applicants can also not be heard complaining that they were not heard on the said purported issue of the "slip rule".

In the same vein, the complaint that the application of the overriding objective rule by the Court was contrary to the rules applicable to

affidavits and procedural matters, is also found baseless and without merit. The Court cannot be faulted in applying the overriding objective principle by way of review because even if the Court so acted wrongly, the same does not amount to an error apparent on the face of the record. The case of **SGS Societe Generale De Surveillance SA and Another** (supra) cited and relied upon by Mr. Masumbuko is therefore equally irrelevant.

The third ground which is to the effect that having taken a note that grounds 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 21, 22, 23, 25, 26, 29, 30, 31 and 32 do not fall under exceptional circumstances warranting revision, the Court was enjoined to strike out the said grounds as the parties cannot argue on illegal grounds, should not detain us. Apart from the fact that this ground is not a fit ground for review, it is as well misconceived. While it is true that the Court, at page 34 and 35 of the record, took note of Mr. Masumbuko's argument that the said grounds do not fall into exceptional circumstances warranting revision, the Court never agreed with the argument. At pages 34 and 35 of the record, the Court had this to say on the said argument by Mr. Masumbuko:

> *"We take note of Mr. Masumbuko's argument that the above advanced grounds of revision do not fall*

into exceptional circumstances warranting revision and that they were raised by a third party.

We as well take note of his argument while making reference to ***Halais Pro- Chemies*** *case that in revision a party cannot challenge evidential value of a judgment except under special circumstances, which he said, the applicants have no established.* ***With respect, we do not find any merit in Mr. Masumbuko's arguments and the authorities cited are thus irrelevant*** *because the applicants were not parties in a Probate Cause subject of this revision application".* [Emphasis added].

The Court having ruled that the arguments and authorities were irrelevant, we see no justification for the complaint as to why the relevant grounds were not struck out. The third ground is therefore accordingly dismissed for being unmerited.

On the fourth ground, it is the applicants' complaint that the Court failed to determine the third ground of objection and that the Court wrongly relied on rule 107 (2) of the Rules. Once again, this ground is also misconceived. First of all, it is not true that the Court did not determine the third point of objection. On that ground, the Court held at page 39 of the record, that the point raised, intended to invite the Court to evaluate the language used in forming the grounds for revision. Such an exercise, it

was held, could have resulted into turning the third point of objection being not a point of law that could be entertained by the Court in terms of rule 107 (2) of the Rules. The ground was therefore determined in that manner. If the ground was not correctly determined or even if, for the sake of argument, the Court wrongly relied on rule 107 (2) of the Rules, that cannot amount to a fitting ground for review. It should be emphasized that an inappropriate application of law is not in itself a ground for review. On this, we get support from our decision in **Chandrakant Joshibhai Patel** (supra) this Court held among other things that:

> *"There will be errors here and there, inadequacies of this or that kind, and generally no judgment can be beyond criticism. Yet while an appeal may be attempted on the pretext of any error, not every error will justify a review".*

Further in **Tanganyika Land Agency Limited and 7 Others v. Manohar Lal Aggrwal,** Civil Application No. 17 of 2008 (unreported) the Court state that:

> *"An application for review is by no means an appeal through a back door whereby an erroneous decision is reheard and corrected at the instance of a litigant who becomes aggrieved by such a decision".*

For the above given reasons and on the above cited authorities, the fourth ground also fails and it is accordingly dismissed.

In the upshot and for the above given reasons, we find that the application does not meet the threshold for review and we accordingly dismissed it in its entirety. By the very nature of this case, we make no order as to costs.

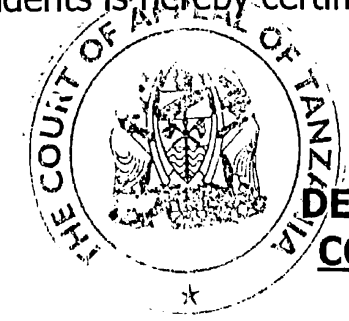
DATED at **DAR ES SALAAM** this 14th day of April, 2022.

M. A. KWARIKO
JUSTICE OF APPEAL

I. J. MAIGE
JUSTICE OF APPEAL

A. M. MWAMPASHI
JUSTICE OF APPEAL

The Ruling delivered this 19th day of April, 2022 in the presence of Mr. Grayson Laizer, advocate counsel for the Applicants and Mr. Paschal Mshanga counsel for the 1st, 2nd and 3rd Respondents and Mr. Grayson Laizer holding brief for Mr. Elisa A. Msuya, counsel for the 4th - 7th Respondents is hereby certified as a true copy of the original.



A. L. KALEGEYA
DEPUTY REGISTRAR
COURT OF APPEAL